

(14) A classification determination, including a classification determination under subpart B of this part; and

(15) An action that entitles an employee to grade retention under 5 CFR part 536 and an action to terminate this entitlement.

(c) *Employees covered.* Subject to a determination by the Secretary or designee under § 9701.102(b), this subpart applies to DHS employees, except as excluded by paragraph (d) of this section.

(d) *Employees excluded.* This subpart does not apply to—

(1) An employee in the competitive service who is serving a probationary, trial, or initial service period, except for a preference eligible employee in the competitive service who has completed the first year of an initial service period;

(2) A preference eligible employee in the excepted service who has not completed 1 year of current continuous service in the same or similar positions in an Executive agency or in the United States Postal Service or Postal Rate Commission;

(3) An employee in the excepted service (other than a preference eligible) who has not completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment of 2 years or less;

(4) A non-preference eligible employee who is serving a time-limited appointment (including a term appointment) of 2 years or less;

(5) Members of the Senior Executive Service;

(6) Administrative law judges;

(7) Employees who are terminated in accordance with terms specified as conditions of employment at the time the appointment was made;

(8) Employees whose appointments are made by and with the advice and consent of the Senate;

(9) Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by—

(i) The President, for a position that the President has excepted from the competitive service;

(ii) OPM, for a position that OPM has excepted from the competitive service; or

(iii) The President or the Secretary for a position excepted from the competitive service by statute;

(10) An employee whose appointment is made by the President;

(11) An employee who is receiving an annuity from the Civil Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund based on the service of such employee;

(12) An employee who is an alien or non-citizen occupying a position outside the United States, as described in 5 U.S.C. 5102(c)(11);

(13) Members of the Homeland Security Labor Relations Board or the Mandatory Removal Panel;

(14) Employees against whom an adverse personnel action is taken or imposed under any statute or regulation other than this subpart (e.g., Transportation Security Administration employees); and

(15) Employees appointed and serving under a Schedule B excepted service appointment subject to conversion to career status pursuant to Executive Order 11203.

§ 9701.605 Initial service period.

(a) DHS may establish an initial service period of 1 to 2 years for certain designated occupations in order for employees in such occupations to demonstrate appropriate competencies. DHS will establish standard policies for determining the applicability and the length of the ISP for specific occupations.

(b) Employees must complete an ISP after selection for a designated DHS position in the competitive service before obtaining coverage under this subpart. All relevant prior Federal civilian service (including non-appropriated fund service), as determined by appropriate standards established by DHS, counts toward completion of this requirement.

(c) An employee who is removed during a probationary, trial, or initial service period must be removed in accordance with 5 CFR 315.804 or 315.805,

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except for a preference eligible employee in the competitive service who has completed the first year of an ISP.

REQUIREMENTS FOR FURLOUGH OF 30 DAYS OR LESS, SUSPENSION, DEMOTION, REDUCTION IN PAY, OR REMOVAL

§ 9701.606 Standard for action.

The Department may take an adverse action under this subpart only for such cause as will promote the efficiency of the service. The standards for mandatory removal offenses and actions taken under the national security provisions are set forth in §§ 9701.607 and 9701.613, respectively.

§ 9701.607 Mandatory removal offenses.

(a) The Secretary has the sole, exclusive, and unreviewable discretion to identify offenses that have a direct and substantial adverse impact on the Department's homeland security mission. Such offenses will be identified in advance as part of the Department's implementing directives, publicized via notice in the FEDERAL REGISTER, and made known to all employees on an annual basis.

(b) When a mandatory removal action is proposed under this section, employees will have the right to advance notice, an opportunity to respond, a written decision, and a review by the Mandatory Removal Panel as set forth in subpart G of this part.

(c) Prior to the issuance of a notice to the employee in question, the Secretary or designee will review and approve a proposed notice of removal on the grounds that the employee has committed a mandatory removal offense.

(d) The Secretary has the sole, exclusive, and unreviewable discretion to mitigate the removal penalty.

(e) Nothing in this section limits the discretion of the Department or any component thereof to remove employees for offenses other than those identified by the Secretary as mandatory removal offenses.

(f) Nothing in this subpart limits the discretion of the Department or any component thereof to remove an em-

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ployee based on the revocation of that employee's security clearance.

§ 9701.608 Procedures.

An employee against whom an adverse action is proposed is entitled to the following:

- (a) A proposal notice under § 9701.609;
- (b) An opportunity to reply under § 9701.610; and
- (c) A decision notice under § 9701.611.

§ 9701.609 Proposal notice.

(a) *Notice period.* The Department must provide at least 15 days advance written notice of a proposed adverse action. However, if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the Department must provide at least 5 days advance written notice.

(b) *Contents of notice.* (1) The proposal notice must inform the employee of the factual basis for the proposed action in sufficient detail to permit the employee to reply to the notice, and inform the employee of his or her right to review the Department's evidence supporting the proposed action. The Department may not use evidence that cannot be disclosed to the employee, his or her representative, or designated physician pursuant to 5 CFR 297.204.

(2) When some but not all employees in a given competitive level are being furloughed, the proposal notice must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough. The notice is not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(c) *Duty status during notice period.* An employee will remain in a duty status in his or her regular position during the notice period. However, when the Department determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Department may elect one